

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

v.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, d/b/a
FEDLOAN SERVICING and AMERICAN
EDUCATION SERVICES,

Defendant.

Civil Action No. 19-cv-9155

**DECLARATION OF THOMAS
F. BURKE IN SUPPORT OF
DEFENDANT PHEAA'S REPLY
IN SUPPORT OF MOTION TO
DISMISS**

**DECLARATION OF THOMAS F. BURKE IN SUPPORT OF DEFENDANT'S REPLY
IN SUPPORT OF MOTION TO DISMISS**

I, Thomas F. Burke, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an attorney at the law firm Ballard Spahr LLP, counsel for defendant Pennsylvania Higher Education Assistance Agency (PHEAA) in the above-captioned matter. I am duly admitted to practice law before the Southern District of New York. I submit this declaration in support of PHEAA's Reply in Support of its Motion to Dismiss filed January 31, 2020.

2. Annexed as Exhibit 1 hereto is a true and correct copy of excerpts of the Servicing Contract between PHEAA and the U.S. Department of Education (Department), an identical copy of which was attached as Exhibit 1 to PHEAA's Memorandum in Support of its Motion to Dismiss (Dkt. No. 41).

3. Annexed as Exhibit 2 hereto is a true and correct copy of the Statement of Interest filed by the Department in *Massachusetts Attorney General v. PHEAA*, No. 1784-cv-02685 (Ma.

Super. Ct.) on January 8, 2018, an identical copy of which was attached as Exhibit 2 to PHEAA's Memorandum in Support of its Motion to Dismiss (Dkt. No. 41).

4. Annexed as Exhibit 3 hereto is a true and correct copy of the Statement of Interest filed by the Department in *Student Loan Servicing Alliance v. Taylor*, No. 18-640 (D.D.C.) on August 4, 2018 at Docket No. 20, an identical copy of which was attached as Exhibit 3 to PHEAA's Memorandum in Support of its Motion to Dismiss (Dkt. No. 41).

5. Annexed as Exhibit 4 hereto is a true and correct copy of the webpage titled *Federal Student Aid Posts New Report to FSA Data Center*, Sept. 19, 2018, which is available electronically at <https://ifap.ed.gov/electronic-announcements/09-19-2018-general-subject-federal-student-aid-posts-new-reports-fsa-data> (last visited March 12, 2020). That resource was cited in PHEAA's Memorandum in Support of its Motion to Dismiss, (Dkt. No. 41, at 5), but the URL for that resource has changed since that time.

6. Annexed as Exhibit 5 hereto is a true and correct copy of a U.S. Government Accountability Office report entitled *Public Service Loan Forgiveness: Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion* (GAO-19-595) (2019), which is available electronically at <https://www.gao.gov/assets/710/701157.pdf>.

7. Annexed as Exhibit 6 hereto is a true and correct copy of a U.S. Government Accountability Office report entitled *Federal Student Loans: Education Needs to Verify Borrowers' Information for Income-Driven Repayment Plans* (GAO-19-347) (2019), which is available electronically at <https://www.gao.gov/assets/700/699968.pdf>.

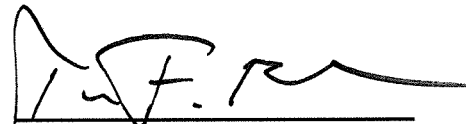
8. Annexed as Exhibit 7 hereto is a true and correct copy of a December 27, 2017 memorandum from Patrick A. Bradfield, Director of Federal Student Aid Acquisitions to PHEAA, entitled "Ownership of and Access to U.S. Department of Education Records and Data."

9. Counsel for the New York Attorney General (NYAG) has already attached and authenticated two other reports cited by PHEAA in its Memorandum in Support of its Motion to Dismiss. (See Dkt. No. 48, Affidavit of Sarah E. Trombley as Exhibits E and O: U.S. Gov't Accountability Office, GAO-18-547, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* (2018), available at <https://www.gao.gov/assets/700/694304.pdf>; Consumer Financial Protection Bureau, *Staying on Track While Giving Back*, June 2017, available at https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyearreport.pdf.)

10. I hereby declare under the penalty of perjury that the foregoing statements made by me are true and correct to the best of my knowledge, information, and belief.

Executed on this 13th day of March, 2020.

By:


Thomas F. Burke